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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
087775,321	04/13/97	WUBBEN	27863

IM21/1228
PEARNE, GORDON, MCCOY & GRANGER
1200 LEADER BUILDING
CLEVELAND OH 44114

EXAMINER
SHERRER, C

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/28/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/776,321

Applicant(s)
Wubben et al

Examiner
Curtis E. Sherrer

Group Art Unit
1761



☒ Responsive to communication(s) filed on Oct 21, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 18-42 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 18-42 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Part III DETAILED ACTION

Drawings

1. The proposed drawing correction filed on 03/27/98 has been disapproved because it is not in the form of a pen-and-ink sketch showing changes in red ink or with the changes otherwise highlighted. See MPEP § 608.02(v).
2. The drawings are objected to because the chromatograms of Figs. 7A and 7B are of very poor quality, so as to be unviewable. Correction is required. The insertion of new matter should be avoided.

Claim Objections

3. Claims 29, 33 and 38 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The cited claims recite a limitation found in parent claim 18.

Claim Rejections - 35 USC § 112

4. Claims 18 to 42 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one

skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. Applicants have added the phrase, in Paper #9, "adding one or more pectins to the beverage at a stage of the preparation process of said beverage effective to prevent any substantial breakdown of said pectins" (Claim 36).

6. Claims 18 to 42 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 18 is considered indefinite because it appears to claim two ranges for which the pectin should be added, i.e., at 0.5 to 30g, and at "a quantity effective to improve the foam head stability."

8. Claim 36 is considered to indefinite because the scope of the phrase "effective to prevent any substantial breakdown of said pectin" is unknown.

9. Claim 20 is considered indefinite because there is no antecedent basis for the phrase "the hop plant."

10. Claim 38 is considered indefinite because it is not seen how it further limits Claim 37.

Claim Rejections - 35 USC § 102

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11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

12. Claims 18 to 24, 28 to 39, 41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Papazian (The New Complete Joy of Home Brewing, page 64) as evidenced by The Practical Brewer (pages 138-39) for the reason set forth in the last Office Action.

13. Claims 18 to 24, 28 to 39, 41 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Lutzen et al (Homebrew Favorites, pp. 80 and 81) as evidenced by The Practical Brewer (pages 138-39) for the reasons set forth in the last Office Action.

14. Claims 18, 21, 36 to 38 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Bukovskii et al. (S.U. Pat. No. 685689) for the reasons set forth in the last Office Action.

Claim Rejections - 35 USC § 103

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15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 24, 25, 27, 29, 31 and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukovskii et al for the reasons set forth in the last Office Action.

17. Claims 19, 20, 22, 23, 26, 28, 30, 32 to 35, 40 and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukovskii et al in view of The Practical Brewer and in further view of Food Colloids (pp. 418-35) for the reasons set forth in the last Office Action.

Response to Arguments

18. Applicants' arguments filed 10/21/98 have been fully considered but they are not persuasive.

19. Applicants state that claim 18 has been amended to distinguish itself from the prior art. With no other discussion, this is not persuasive.

Conclusion

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20. No claim is allowed.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703)-308-3535. The fax phone number for this Group is (703)-305-3602.

23. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

A handwritten signature in black ink, appearing to read 'Curtis E. Sherrer', with a long horizontal flourish extending to the right.

Curtis E. Sherrer

December 23, 1998